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RECEIVED

MAY - 1 2006

Federal Communications Commission
Office of Secretary

May 1, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A235
Washington, DC 20554

RE: TRS Fund Administration
CG Docket No. 03-123

Dear Ms. Dortch:

In accordance with 47 C.F.R. § 64.604 (c)(5)(iii)(H), enclosed are the original and four (4) copies of the National Exchange Carrier Association, Inc.'s Annual Submission of TRS Payment and Revenue Requirements, for July 2006 – June 2007.

Acknowledgment and date of receipt of this letter is requested. A duplicate copy has been provided for that purpose.

Sincerely,

John A Ricker

Enclosures

Cc: Thomas Chandler, Consumer and Governmental Affairs Bureau
Jay Keithley, Consumer and Governmental Affairs Bureau
Gregory Hlibok, Consumer and Governmental Affairs Bureau
Andrew Mulitz, Consumer and Governmental Affairs Bureau
James Lande, Wireline Competition Bureau
Mark Stephens, Office of the Managing Director
Michael Smith, Office of the Managing Director
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing was served this 1st day of May, 2006, *by mailing copies thereof by United States Mail, first class postage paid, by express mail,* or by hand delivery, to the persons listed below.

Jackie Williams

Jackie Williams

The following parties were served:

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Telecommunications Services for	)	
Individuals with Hearing and	)	CG Docket 03-123
Speech Disabilities, and the	)	
Americans with Disabilities Act	)	
of 1990	)	

Interstate Telecommunications Relay Services Fund

Payment Formula and Fund Size Estimate

National Exchange
Carrier Association, Inc.
80 South Jefferson Road
Whippany, NJ 07981
May 1, 2006

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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Americans with Disabilities Act	)	
of 1990	)	

Payment Formula and Fund Size Estimate
Interstate Telecommunications Relay Services (TRS) Fund
For July 2006 through June 2007

1. Introduction

The National Exchange Carrier Association, Inc. (NECA), as Interstate Telecommunications Relay Services (TRS) Fund Administrator (the Administrator), herein submits proposed provider payment formulas, fund size estimate and carrier contribution factor for the period July 2006 through June 2007, in accordance with Section 64.604 of the Federal Communications Commission's (FCC or Commission) rules.[1]

Based on cost and demand projections received from providers of relay services, adjusted as described herein, this filing proposes reductions to the reimbursement rates for traditional TRS, Speech to Speech (STS), Video Relay Service (VRS) and Internet Protocol Relay Service (IP), for the 2006 – 2007 funding period. The projected funding requirement is also lower than that for the current funding year.

[1] 47 C.F.R. §64.604 (c)(5)(iii)(H).

Collectively, TRS component services are projected to require funding of $428.3 million for 2006-2007. This filing proposes to use $40 million of anticipated surplus from the current funding year as an offset to the 2006 – 2007 funding requirement, leaving a funding requirement of $388 million on which to base the proposed contribution factor. Based on calendar year 2005 interstate and international revenues totaling $78.5 billion, the proposed contribution factor is 0.00492, an 12.8% reduction to the current contribution factor of 0.00564 for 2005 - 2006. When applied to carriers' 2005 end-user billed interstate and international revenues, the proposed contribution factor, coupled with the $40 million current surplus applied to the 2006 – 2007 funding year, will produce the required fund size of $428.3 million.

Upon approval by the Commission of the proposed contribution factor, fund size requirement, and reimbursement rates, the Administrator will begin billing carriers and disbursing funds to relay service providers for the 2006 – 2007 funding period in July 2006.

2. Interstate TRS Fund

The TRS Fund is designed to compensate eligible relay service providers for the reasonable costs of furnishing interstate traditional TRS and STS, and both intrastate and interstate VRS and IP.[2] Fund distributions to providers are made on the basis of payment formulas initially computed by the Administrator in accordance with Commission rules, as approved or modified by the Commission.

[2] Eligible providers are defined as (1) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to section 64.605; or (2) TRS facilities owned by or operated under contract with a common carrier providing interstate services pursuant to section 64.604; or (3) interstate common carriers offering TRS pursuant to section 64.604. *See* 47 C.F.R. § 64.604 (c)(5)(iii)(F).

The Commission's shared funding mechanism for the TRS Fund ensures that the costs of meeting relay service obligations are borne equitably. The fund requires contributions from all interstate telecommunications common carriers, based on each carrier's percentage of end user interstate services.[3]

The TRS funding period commences July 1 and ends June 30 of the following calendar year. The Administrator will use the carriers' 2005 interstate and international end user revenues reported on the Telecommunications Reporting Worksheet, FCC Form 499-A, on April 1, 2006, and provided by the Universal Service Administrative Company (USAC), the Revenue Data Collection Agent, as the basis for calculating carriers' contributions. Carriers' 2005 revenues are $74.79 billion, $3.5 billion less than reported for 2004. Annual contributions are due July 26th. Carriers whose contributions are $1,200 or more may opt to pay in twelve equal monthly installments, due on the 26th of each month. Approximately 4,175 carriers will be billed during the 2006 – 2007 funding period, of which about 10 percent will pay on a monthly basis.

Providers are paid by the end of the month following the month when the minutes were handled. For example, minutes handled by providers in July 2006 are reported in

[3] In its Streamlined Contributor Reporting Requirements Order, the Commission adopted rules requiring every carrier providing interstate telecommunications services to contribute to the TRS Fund on the basis of its relative share of interstate end user revenues. *See* 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, *Report and Order*, 14 FCC Rcd 16602 (1999). These contributions are made by carriers offering interstate services including, but not limited to, cellular telephone and paging; mobile radio; operator services; personal communications service (PCS); access (including subscriber line charges); alternative access and special access; packet-switched; WATS; 800; 900; message telephone service; private line; telex; telegraph; video; satellite; intraLATA; international and resale services. *See* 47 C.F.R. § 64.604 (c)(5)(iii)(A).

August 2006 and providers will then be compensated for their July 2006 minutes at the end of August.[4]

3. Data Collection and Analysis

Relay providers continue to be a diverse group. Services are offered by large interstate interexchange carriers, large and small local exchange carriers, non-telecommunications for-profit companies, and not-for-profit organizations. Some providers offer all four services while others only provide one or two. Several providers have been reimbursed for traditional TRS for more than ten years since the inception of the fund in 1993, while new VRS-only providers started receiving reimbursement in the last three to four years.

In light of direction provided in the Commission's *June 30, 2004 TRS Order*[5] the annual Relay Services Data Request and its instructions were modified to reflect changes in the data and support documentation required for development of the 2006 – 2007 reimbursement rates. Revised data collection forms and instructions were distributed to providers on October 3, 2005.[6] Providers were directed to submit data separately for TRS, STS, IP and VRS by January 16, 2006.

When the shared fund commenced in 1993 each relay center operated independently and costs differed from one center to the next for carriers with multiple relay centers. Consequently, cost data were collected on a center-by-center basis. Today, however, most

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[4] *See* Exhibit 5 Reporting and Disbursement Schedule.

[5] Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 90-571, CC Docket No. 98-67, CG Docket No. 03-123, *Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 12475 (2004) *(June 30, 2004 TRS Order).*

[6] Appendix A contains the Data Collection form and instructions.

relay providers distribute calls using the next available position methodology, regardless of center location, and allocate their costs across centers based on the number of minutes handled. The requirement to provide data on a center-by-center basis was virtually eliminated in the September 2004 data collection except in the area of support for salaries and benefits for center personnel. Data are now requested and reported on a service-by-service basis rather than on a center-by-center basis as was the case prior to the 2005 filing.

In the *June 30, 2004 TRS Order*, the FCC confirmed that the reasonable costs of providing TRS included only "those direct and indirect costs necessary to provide the service consistent with all applicable regulations governing the provision of the service, *i.e.*, the TRS mandatory minimum standards" and therefore may not include a markup on those costs.[7] However, the FCC did allow the inclusion of a return on capital investment of 11.25%, the rate of return that the Commission has applied in a wide range of telecommunications contexts.[8] A new section on capital investment was added to the data request in 2005 to allow providers to report those costs. The result of calculating the 11.25% return was included in the development of the average cost per minute. In addition, a factor of 1.4% as an allowance for cash working capital was added to the total average cost per minute to arrive at the reimbursement rate for each service. This factor represents one-twelfth, or one month, of the 11.25% rate of return plus a tax allowance.[9]

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[7] *June 30, 2004 TRS Order* at ¶ 181.

[8] *Id* at ¶¶ 181 and 182.

[9] More specifically, the 1.4 % factor is calculated as follows: (1) the 11.25% rate of return, on a monthly basis, is .9375% (11.25 divided by 12); (2) because the .9375% rate of return is an after-tax rate of return, it must be adjusted to a pre-tax figure, so that the compensation paid for the allowance for working capital equals the 11.25% annualized rate of return *after* taxes are paid on the compensation received; (3) the tax adjustment is based on a 35% federal tax rate and a 5% state tax rate, which totals 40%; (4) however, some providers are not-for-profit, and therefore are not entitled to a tax allowance – based on an analysis of the providers, it is estimated that not-for-profit providers account for 20% of all minutes of service provided, and therefore, the

The June 30th Compensation Rates Order made clear that

> The TRS fund administrator's role is not simply to rubber-stamp the cost data submitted, but to ensure that the data reflects the 'reasonable costs' of providing the various services in accordance with our rules. The Commission's affirmance of the *2003 Bureau TRS Order* reflects that adjustments to the providers' submitted cost data may be appropriate and necessary to ensure that the compensation rates are based on 'reasonable' costs and NECA, as the fund administrator, is surely empowered to make these adjustments in the first instance. Indeed, the TRS regulations provide that the fund administrator shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments.' That provision makes clear, implicitly if not explicitly, that the fund administrator is not required to base its proposed compensation rates solely on the raw data submitted by the providers.[10]

The Commission reinforced this position in 2005 when it stated, "the rate does not correlate with any provider's actual costs – it simply represents one estimate of what a reasonable compensation should be to fairly compensate all providers".[11]

Cost and demand data reported by relay providers consisted of actual amounts for 2004, annualized actual amounts for 2005, and projections for 2006 and 2007. To support the cost data requested, providers were required to submit detailed explanations of their expenses in the categories of salaries and benefits for relay center personnel, annual administrative expenses (finance, legal, engineering, human resources, and other corporate

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40% tax allowance rate is reduced by 20%, which results in a rate of 32%; and (5) using the 32% rate, and applying the formula to convert from an after-tax allowance to a pre-tax allowance, the result is that the .9375% monthly rate of return must be adjusted by multiplying it by 1.47, which equals a monthly working capital allowance of 1.4% (that is applied to the per-minute compensation rate that is based on the providers' projected costs and minutes, adjusted as necessary). *See* NECA's Annual Submission of TRS Payment and Revenue Requirement, for July 2004 – June 2005, CC Docket No. 98-67 (May 3, 2004) at 7 *(NECA 2004 Filing)*, Exs. 1C, 1D, & 1E. The formula for converting from an after-tax basis to a pre-tax basis is: 1 + X/(1-X), where X = net tax allowance (32%). Therefore, the pre-tax allowance for working capital is calculated as follows: 0.9375 x [1 + (.32)/(1 - .32)] = (0.9375) x 1.4706] = 1.3786%, which was rounded to 1.4%. Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, *Order,* 19 FCC Rcd 12224 (2004) at ¶ 16, n. 53 *(June 30th Compensation Rates Order).*

[10] *Id.* at ¶40 (internal citations omitted).

[11] Telecommunications Relay Services and Speech-to Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, CG Docket No. 03-123, *Order*, 20 FCC Rcd 11405 (2005) at ¶ 28, n. 91.

overheads), depreciation and capital investment, and outreach and advertising. 2004 and 2005 data are used for trending purposes and will be used for the review of certain providers as part of the fund Administrator's annual audit process. 2006 and 2007 projections are used for formula development for the forthcoming funding period.

4. TRS Formula Development and Fund Requirement

a) General Formula Development Methodology

In the *June 30, 2004 TRS Order* the Commission affirmed that its definition of reasonable costs of providing TRS are "those direct and indirect costs necessary to provide the service consistent with all applicable regulations governing the provision of the service, i.e., the TRS mandatory minimum standards".[12] It also observed that "[w]e do not believe the Interstate TRS Fund was intended to be a source of funding for the development of TRS services, features, and enhancements that, although perhaps desirable, are not necessary for the provision of functionally equivalent TRS service as an accommodation for persons with certain disabilities".[13]

Given this FCC direction, the Administrator continues to review cost projections submitted by providers closely, particularly as they relate to the relay center operation to ensure the reasonable costs of providing relay service are reflected in the disbursement formulas. As in prior years, certain projected costs that appear to be outside the requirements of providers meeting the minimum standards for provision of the service have been excluded. To the extent that data of certain providers was totally inconsistent with other providers'

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[12] *June 30, 2004 TRS Order* at ¶ 181.

[13] *Id.* at ¶190

data, or insufficient in detail to permit any meaningful analysis, those data were excluded as well.

Marketing and advertising expenses reported for each of the services have been excluded. The Commission has previously stated that it expects providers to inform the user community of the availability of TRS capability, i.e., some level of outreach functions.[14] It is our understanding that costs of providers marketing their own TRS services are not includable in the formulas, however.

Projected costs were segregated into eight distinct categories for review:

- **Facilities**, those expenses associated with land and buildings, etc.;
- **Communications Assistants**, the costs of the individuals performing the interpretive services;[15]
- **Relay Center Operation**, other costs associated with the relay center including supervisory management, telecommunications expense, etc;
- **Indirect Expense**, finance, human resources, legal expenses, etc;
- **Depreciation Expense**, annual depreciation on facilities and equipment;
- **Outreach Expense**, the projected costs of notifying consumers of service availability;
- **Other Expenses**, projected expenses not directly associated with one of the other expense categories; and
- **Capital Investment,** the investment in facilities, equipment, furniture, etc. associated with the relay center.

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[14] *See, e.g.,* Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, CG Docket No. 03-123, *Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking*, 18 FCC Rcd 12379 (2003).

[15] Service provided under contract with another provider has been included in this category as well.

Consistent with Commission directions additional scrutiny has been applied to the effects that projected costs in each category, e.g., indirect costs, have on the average cost per minute. These costs on a per-minute basis for each provider were compared to costs submitted by the other providers. In instances where the average cost per minute of a specific category was significantly higher than the average cost per minute for that category of costs for the other providers, the projected cost for the company who projected a high cost per minute for that category was limited to the weighted average cost of the other providers. For example, when the relationship between indirect costs and the sum of communications assistant expense, including sub-contractor expense and relay center operations expense, was tested, one provider was found to have projected an indirect expense ratio more than ten times the weighted average reported by the other providers. In this instance, the Administrator applied the weighted average percentage of the other providers' to the sum of communications assistant expense and relay center operations expense of the provider in question to determine the allowable indirect expenses for that provider.

b) Traditional TRS Formula Development

Currently, seven providers receive reimbursement for traditional TRS interstate minutes. For interstate TRS, once the relationship of a provider's interstate and international minutes plus an allocation of its toll-free and 900 service minutes is known, a usage-based factor may be applied to a provider's total costs to determine the interstate portion of the costs.

Providers are generally unable to identify the jurisdiction of toll-free calls.[16] Based on guidance from the Interstate TRS Fund Advisory Council, the Administrator has, since 1996, developed a factor for TRS toll-free minutes based on the relationship of traditional TRS interstate and international billed minutes to TRS intrastate toll, interstate and international minutes.

This methodology was used through the 2002 – 2003 funding period. The allocation factor developed for that period was 51 percent interstate. When the same methodology was used to develop the factor for the 2003 – 2004 funding period, a significant shift in projected minutes from traditional TRS to IP relay was noted. It did not seem likely that the jurisdiction of the calls had changed. Rather, it appeared more likely that the factor was distorted by text telephone users migrating to the use of computers and the Internet to access relay service.[17]

Calls placed using Internet protocol exhibit many of the same characteristics as calls placed to toll-free numbers – the provider is unable to identify the jurisdiction of the call and its associated minutes. Because it is not yet possible to identify the origin of IP calls, it is not possible to develop a factor using IP demand data either. The Administrator's recommendation to freeze the toll-free allocation factor at 51% for the 2003 – 2004 period was accepted by the Commission in 2003.[18]

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[16] For most TRS providers, the data submitted in the 1996 TRS center data request represented their initial reporting of toll free minutes.

[17] NECA's Annual Submission of TRS Payment and Revenue Requirements, for July 2003- June 2004, CC Docket No. 98-67 (May 1, 2003) at 7.

[18] Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, *Order*, 18 FCC Rcd 12823 (2003).

Since providers have the same problem of being unable to identify the jurisdiction of calls placed to 900 numbers, the same methodology was used to estimate interstate usage associated with these messages. The Administrator again recommends using the factor of 51% for the 2006 – 2007 funding period for both toll-free and 900 number minutes. The interstate minutes of use used to calculate the traditional TRS reimbursement rate reflect this methodology.

In addition to marketing and advertising costs submitted by all providers, costs and demand associated with one provider were excluded where it was found that the provider had unique state requirements that result in its operation being significantly more costly than those of other providers. In addition, the relationship of Indirect Expenses to the sum of Communications Assistant and Relay Center Operations expenses for one provider were found to be significantly higher than that reported by other providers. Specifically, the relationship of indirect expenses to the sum of communications assistant expenses and relay center operations expenses for this provider were reported at levels of 60% for 2006 and 66% for 2007. The weighted average relationship for the other providers for these cost categories were 6.09% for 2006 and 6.35% for 2007. This provider's allowable indirect expenses were accordingly capped at 6.09% of its combined communications assistant expenses and relay center operations expenses for 2006 and 6.3% for 2007.

Once the data analysis was completed, incorporating the measures noted above, the traditional TRS cost per minute of use for each provider was calculated as follows: projected total 2006 TRS costs were divided by projected total 2006 TRS minutes excluding general assistance minutes, and projected total 2007 TRS costs were divided by projected total 2007 TRS minutes excluding general assistance minutes. The resulting individual provider cost

per minute for 2006 and 2007 was multiplied by that provider's estimated 2006 and 2007 interstate minutes (including international minutes and the interstate allocation of toll free and 900 number minutes), to produce interstate costs by TRS provider for each year. The annual interstate cost and demand projections for each year were averaged to represent the funding year. The resulting per minute amount was increased by 1.04% to adjust for cash working capital (CWC). To maintain the confidentiality of the TRS providers' data, the individual calculations are not included in the proposed formula exhibits. Only the total cost and demand projections and the calculation of the average cost per interstate TRS minute are shown.[19]

TRS providers' minute forecasts for the next two years were used to calculate the reimbursement rate. With more than ten years of historical growth available on traditional TRS, actual growth data can be used to estimate the size of the traditional TRS portion of the interstate fund. Interstate captioned telephone VCO minutes, initially reimbursed in July 2004, are included with traditional TRS minutes for this purpose.

In past years, a percentage growth rate was calculated based on year-over-year increases or decreases in minutes. This year, however, as suggested in comments by AT&T,[20] average daily minutes of use has been incorporated into the month-over-month growth methodology

The traditional TRS forecast for 2006 – 2007 is based on data from the most recent thirteen months of actual minutes reported by providers. These data were used to develop an average minutes of use per day for each month. The change in average minutes per day,

[19] See Exhibit 1A for TRS rate development.

[20] Comments of AT&T, CC Docket 98-67 (May 13, 2005) at n. 4.

positive or negative was then determined. The change in average minutes per day amounts were summed and divided by twelve. The resulting amount, either positive or negative, was applied to the number of days for the months from the current funding year for which data has not yet been provided and for the twelve months of the 2006 – 2007 funding year.

Traditional TRS minutes have experienced a decline of approximately 721 minutes per day during the most recent thirteen months. Using February 2006 as the base month, this negative rate was used to adjust traditional TRS minutes from March 2006 through June 2007 to arrive at a total number of 15.8 million projected traditional TRS interstate minutes, including captioned telephone VCO minutes, for the July 2006 – June 2007 funding period.[21]

c) IP Relay Service Formula Development

In an April 2002 Order, [22] the FCC authorized reimbursement of all IP relay minutes from the interstate TRS fund on an interim basis. IP relay minutes were to be reimbursed at the same rate as traditional TRS minutes because it appeared that there was little difference in the costs of providing these services.[23] Based on data provided in April 2005,[24] the Commission in that year determined it was appropriate to calculate a separate payment formula for IP relay service.[25]

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[21] See Exhibit 2, page 2A of 4, for development of the traditional TRS forecast.

[22] Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc., CC Docket No. 98-67, *Declaratory Ruling and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 7779 (2002) (*IP Declaratory Ruling & Second FNPRM*) (clarifying that IP Relay falls within the statutory definition of TRS, and therefore, such services are eligible to recover their costs from the interstate TRS fund).

[23] *Id.* at ¶22.

[24] NECA's Annual Submission of TRS Payment and Revenue Requirements, for July 2005- June 2006, CC Docket No. 98-67 (April 25, 2005).

[25] *See* Telecommunications Relay Services, and Speech to Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket Nos. 98-67 and 03-123, *Order*, 20 FCC Rcd 11405 (2005)at ¶ 14 *(June 28 Order).*

A review of provider data for IP Relay service in 2006 shows that one provider had included in its Outreach expenses certain training-related costs that appear to be beyond what is required for the provider to meet minimum requirements for providing the service. Additionally, this provider included specific finance expenses attributable to strategic consulting services. These expenses were excluded because they did not appear to be consistent with finance expenses required to support a relay center provider's efforts to meet the minimum requirements of providing the service. Based on the analysis described in Section 4.a) above, it was determined that one additional provider had projected indirect costs that, when compared to the sum of its communications assistant and relay center operations expenses, was significantly higher than the other providers' relationship of indirect expense to the sum of their communications assistant and relay center operations expenses. Accordingly, this provider's indirect expenses were limited to the same percent relationship of indirect expenses as the weighted average of the other providers' indirect expenses to the sum of their communications assistant and relay center operations expenses.

The projected per-minute cost of IP relay for each provider was determined as follows: adjusted total 2006 IP relay costs were divided by projected total 2006 IP relay minutes excluding general assistance, and adjusted total 2007 IP relay costs were divided by projected total 2007 IP relay minutes excluding general assistance. The resulting adjusted provider's cost per minute for 2006 and 2007 was multiplied by that provider's total IP relay minutes excluding international to produce total costs per provider for each year.[26] IP relay totals were then combined to determine the average reimbursement rate for all IP relay

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[26] *See* Exhibit 1B for IP rate development. To maintain the confidentiality of the IP providers' data, these individual calculations are not included in the rate calculation exhibits. Only the total cost and demand projections and the calculation of the proposed per-minute reimbursement formula for IP relay are shown.

minutes, except international. The resulting per minute amount was increased by 1.04% to adjust for CWC.

The 2006 – 2007 demand forecast focused on the thirteen-month period between February 2005 and February 2006 because it provided twelve data points of average daily usage on which to base the future projections. As described in Section 4.b) *supra*, the average daily growth projection methodology was utilized. Based on this data, the average daily minute growth for the period was 361. IP relay minutes were grown by that average daily amount multiplied by the number of days in each month, using February 2006 as the base, from March 2006 through June 2007, to arrive at a total number of minutes for the July 2006 – June 2007 funding period of 75.6 million.[27]

d) STS Formula Development

The FCC authorized reimbursement of interstate STS minutes, beginning in March 2001.[28] Because of the different characteristics of the service provided by the Communications Assistant (CA) when handling a STS call, i.e., communication of a speech conversation versus communication of a text conversation, a separate reimbursement rate has been developed for STS since its inception.

In addition to excluding marketing and advertising costs, two providers had projected per minute costs that were well in excess of the projected cost per minute of the other providers, primarily the result of significantly higher interpreter costs. These providers' data

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[27] *See* Exhibit 2, page 2B of 4, for development of the IP forecast.

[28] *See* Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 5140 (2000) (*March 2000 Improved TRS Order*).

were therefore excluded from calculation of the proposed formula. The relationship of projected indirect expenses compared to the sum of communications assistant and relay center operations expenses for one provider was significantly higher than the weighted average relationship of those costs of the other providers. This provider's projected indirect expenses were therefore limited to the weighted average percentage of the other providers.

After these provider projections were adjusted as described above, the STS cost per minute of use for each provider was calculated as follows: projected total 2006 STS costs were divided by projected total 2006 STS minutes, and projected total 2007 STS costs were divided by projected total 2007 STS minutes. The resulting individual provider's cost per minute for 2006 and 2007 was multiplied by that provider's estimated 2006 and 2007 interstate minutes (including international minutes and the interstate allocation of toll free and 900 number minutes), to produce interstate costs by STS provider for each year. Only the total cost and demand projections and the calculation of the average cost per interstate STS minute are shown.[29]

To calculate the average STS cost for July 2006 – June 2007, cost and demand totals for 2006 and 2007 for interstate STS were summed. Next, the total projected interstate costs were divided by the total interstate minutes producing an average cost per minute. Finally, the 1.4% cash working capital factor, explained in Section 3 *supra*, was applied to the average cost per minute to produce a proposed reimbursement formula for interstate STS.

The thirteen-month period between February 2005 and February 2006 was used to develop the 2006 – 2007forecast. Using the aforementioned average daily minute forecasting methodology, an average daily minute growth of negative 2.4 minutes was developed for the

[29] *See* Exhibit 1C for STS rate development.

period.[30] *STS minutes were adjusted by that average daily amount applied to the number of* days in each month, using February 2006 as the base, from April 2006 through June 2007, to arrive at a total number of minutes for the July 2006 – June 2007 funding period of 158.8 thousand.[31]

It appears that state STS contracts for the most part compensate providers for STS at the same rate per minute as traditional TRS service. Given the paucity of demand for this service, the past few years have produced significant swings in the proposed formula level.[32] The Commission may therefore wish to consider amending the rules to consolidate STS and traditional TRS into a single per minute compensation formula.

e) VRS Formula Development

In the *March 2000 Improved TRS Order*,[33] the Commission concluded that VRS was a form of TRS and permitted VRS to be compensated on an interim basis, using the same average per-minute methodology used for traditional TRS, so that providers could recover their reasonable costs related to providing VRS. Although reimbursement for VRS was available beginning in October 2000, providers did not begin to offer VRS until the FCC

[30] *See* Exhibit 2, page 2C of 4, for the STS forecast.

[31] *See* Exhibit 4, TRS Fund Requirements.

[32] For example for 2006 and 2007, one provider projects handling only 116 minutes at over $30.00 per minute. While the miniscule demand has virtually no impact on the projected rate, it highlights the problems encountered in determining an appropriate rate level to recommend. NECA has reviewed this situation with the TRS Advisory Council and the Council supports the suggestion that the Commission may wish to consider modifying the rules to combine these services into a single formula in the future.

[33] *March 2000 Improved TRS Order* at ¶34.

authorized waivers of certain service requirements in December 2001.[34] *Since that time, the* number of VRS providers has grown from two to eight, of which three provide VRS only.

As with the other services, all marketing and advertising expenses have been excluded from the calculation of the proposed VRS formula. Consistent with the approach taken in formulas used in the current funding year, expenses for Certified Deaf Interpreters (CDI), (i.e., additional deaf interpreters on standby to help hearing interpreters on unusual or difficult calls) were excluded. Also excluded were certain finance and training (outreach) costs submitted by one provider as being beyond what is necessary to achieve the mandatory minimum standards required by the Commission's rules.

One provider, submitting data for the first time, reported projected costs that were, on a category-by-category basis, significantly out of line with the other providers, (e.g., video relay interpreter projected costs that were approximately one-fifth the average of the other providers, and marketing and outreach expenses that accounted for approximately twenty-five percent of the total cost projection.) This provider's cost projection was excluded in its entirety. Additionally, the cost projection of another provider was excluded in its entirety because individual cost category expense data was not provided.

Projected demand submitted by the remaining providers for the 2007 – 2007 funding year was lower than the annualized actual demand for the months of January and February 2006. In addition, one provider reported significantly higher video interpreter costs for 2007 in spite of projecting a reduction in demand.[35] This provider's projected costs were therefore adjusted to avoid overstatement of the resulting formula by increasing 2006 video interpreter

[34] *See* Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, *Order*, 17 FCC Rcd 157 (2002).

expense per minute for this provider by five percent, prior to calculating the weighted average cost per minute as discussed below.

A weighted average cost per minute was developed for the video relay interpreters. In order to compensate for the low demand projections submitted by providers, estimated demand quantities were developed for the funding year based on the average daily growth per day methodology used for the other services. Based on an average historical daily minute growth of 4,162 per day experienced between February 2005 and February 2006, VRS demand for the funding year is estimated to be 51.7 million minutes. Using the weighted average cost per-minute of the video relay interpreters for the funding year ($4.25), a revised estimate of the costs for the funding year of the video relay interpreters was calculated. Recognizing that the additional minutes will add to the cost of relay center operations, as well as potentially other VRS-related costs, the same technique was applied to the relay center operations and indirect categories of expenses, multiplying the revised demand quantity by the weighted average relay center operations expense submitted by providers and the adjusted weighted average per minute indirect expense.

The revised variable costs were added to the other cost categories and the result divided by the 2006 -2007 demand projection. Basing the VRS rate on a combination of variable costs per minute and demand projections consistent with recent experience and fixed costs submitted by providers produces a proposed payment formula that is consistent with recent Commission Orders.

The total VRS cost of $ 645 million for 2006 and 2007 was divided by total minutes of 103.8 million for the same time period, producing an average cost per minute for July

[35] This provider's per-minute communications assistant expense for 2006 was increased by 5% for use in determining the weighted average communications assistant expense described *infra.*

2006 through June 2007 of $6.050. Application of the 1.4% CWC factor to the average cost per VRS minute produces a proposed per-minute reimbursement rate for the funding period of $6.116.

As described above,[36] the projected VRS demand for the 2006-2007 funding year is 51.7 million minutes.

5. Contribution Factor Calculation

In addition to the funding requirements for the four relay services, administrative expenses of approximately $800 thousand, including TRS Council meeting costs and the cost of an annual audit by an independent auditor, are included in the total fund requirement. Interest on invested funds for the July 2006 – June 2007 period is projected to be $2.8 million.

It is anticipated that there will be a surplus of approximately $64 million at the end of the current funding year, i.e., after June 2006 minutes are paid in July. Based on guidance from the TRS Advisory Council, the Administrator proposes to apply $40 million of the surplus to offset the 2006 -2007 funding requirement. The remaining $24 million of the projected surplus will be retained in lieu of adding a safety margin to the projected reimbursement. This is believed to be adequate to protect the fund in the event that actual minute growth exceeds forecast levels, or if the contribution base in July, at the time of carrier billing, turns out to be less than the April base used to calculate the contribution factor, as was the case in 2005.

[36] *See supra* at 19.

As detailed in Exhibit 4, the TRS Fund size including traditional TRS, IP, STS and VRS, administrative expenses, with offsets for current surplus and projected interest income is projected to be $385.7 million for the July 2006 – June 2007 funding period.

The proposed contribution factor for the TRS Fund was calculated by using the carriers' 2005 end-user interstate and international revenues reported on the FCC Form 499A on April 1, 2006, as provided by USAC. Dividing the fund requirement of $385.7 million by the interstate and international end-user carrier revenues of $78.5 billion produces a factor of 0.00492.

The Administrator will continue to monitor demand for the various relay services carefully, and keep the TRS Advisory Council and the Commission informed of actual reported demand levels as compared to forecasts.

6. Program Administration

a) Interstate TRS Fund Advisory Council Report

Pursuant to section 64.604 of the Commission's rules, the Interstate TRS Fund Advisory Council advises the Administrator on interstate TRS cost recovery matters.[37] The advisory council includes non-paid volunteers from the hearing and speech disability community, TRS users (voice and text telephone), state regulators and relay administrators, interstate service providers, and TRS providers. Appendix B, Exhibit 1 contains a listing of current Advisory Council members.[38]

[37] 47 C.F.R. § 64.604(c)(5)(iii)(H).

[38] In a July 1999 Order, the FCC authorized the addition of a position in the hearing and speech disability community category for a representative from the speech disability community. *See* Appointment of the Telecommunications Relay Services (TRS) Fund Administrator and Composition of the Interstate TRS Advisory Council, CC Docket No. 90-571, *Memorandum Opinion and Order*, 14 FCC Rcd 10553 (1999).